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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

| | | |
|--|-----------------------------------|-------------------------|
| |) Case No. | |
| ABANTE ROOTER AND |) | |
| PLUMBING, INC., individually and on |) <u>CLASS ACTION</u> | |
| behalf of all others similarly situated, |) | |
| |) COMPLAINT FOR VIOLATIONS | |
| Plaintiff, |) OF: | |
| |) | |
| vs. |) | 1. NEGLIGENT VIOLATIONS |
| |) | OF THE TELEPHONE |
| |) | CONSUMER PROTECTION |
| MARTIN BROTHERS INSURANCE |) | ACT [47 U.S.C. §227(b)] |
| SERVICES, LLC d/b/a FAST START |) | 2. WILLFUL VIOLATIONS |
| INSURANCE & FINANCIAL |) | OF THE TELEPHONE |
| SERVICES, INC., and DOES 1 through |) | CONSUMER PROTECTION |
| 10, inclusive, and each of them, |) | ACT [47 U.S.C. §227(b)] |
| |) | 3. NEGLIGENT VIOLATIONS |
| |) | OF THE TELEPHONE |
| Defendant. |) | CONSUMER PROTECTION |
| |) | ACT [47 U.S.C. §227(c)] |
| |) | 4. WILLFUL VIOLATIONS |
| |) | OF THE TELEPHONE |
| |) | CONSUMER PROTECTION |
| |) | ACT [47 U.S.C. §227(c)] |

DEMAND FOR JURY TRIAL

1 Plaintiff ABANTE ROOTER AND PLUMBING, INC. (“Plaintiff”),
2 individually and on behalf of all others similarly situated, alleges the following
3 upon information and belief based upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this action individually and on behalf of all others
6 similarly situated seeking damages and any other available legal or equitable
7 remedies resulting from the illegal actions of MARTIN BROTHERS INSURANCE
8 SERVICES, LLC d/b/a FAST START INSURANCE & FINANCIAL SERVICES,
9 INC. (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff
10 on Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection
11 Act, 47. U.S.C. § 227 *et seq.* (“TCPA”) and related regulations, specifically the
12 National Do-Not-Call provisions, thereby invading Plaintiff’s privacy.

13 **JURISDICTION & VENUE**

14 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
15 a resident of California, seeks relief on behalf of a Class, which will result in at
16 least one class member belonging to a different state than that of Defendant, a
17 California company. Plaintiff also seeks up to \$1,500.00 in damages for each call
18 in violation of the TCPA, which, when aggregated among a proposed class in the
19 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.
20 Therefore, both diversity jurisdiction and the damages threshold under the Class
21 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

22 3. Venue is proper in the United States District Court for the Northern
23 District of California pursuant to 28 U.S.C. 1391(b) and because Defendant does
24 business within the State of California and Plaintiff resides within the County of
25 Alameda.

26 **PARTIES**

27 4. Plaintiff, ABANTE ROOTER AND PLUMBING, INC. (“Plaintiff”),
28 is a corporation of the State of California, whose principal place of business is in

1 the county of Alameda and is a “person” as defined by 47 U.S.C. § 153 (39).

2 5. Defendant, MARTIN BROTHERS INSURANCE SERVICES, LLC
3 d/b/a FAST START INSURANCE & FINANCIAL SERVICES, INC.
4 (“Defendant”) is an insurance company, and is a “person” as defined by 47 U.S.C.
5 § 153 (39).

6 6. The above named Defendant, and its subsidiaries and agents, are
7 collectively referred to as “Defendants.” The true names and capacities of the
8 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
9 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
10 names. Each of the Defendants designated herein as a DOE is legally responsible
11 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
12 Complaint to reflect the true names and capacities of the DOE Defendants when
13 such identities become known.

14 7. Plaintiff is informed and believes that at all relevant times, each and
15 every Defendant was acting as an agent and/or employee of each of the other
16 Defendants and was acting within the course and scope of said agency and/or
17 employment with the full knowledge and consent of each of the other Defendants.
18 Plaintiff is informed and believes that each of the acts and/or omissions complained
19 of herein was made known to, and ratified by, each of the other Defendants.

20 **FACTUAL ALLEGATIONS**

21 8. Beginning in or around May 2015, Defendant contacted Plaintiff on
22 Plaintiff’s cellular telephone numbers ending in -5154, -1636, -0106, and -1080, in
23 an attempt to solicit Plaintiff to purchase Defendant’s services.

24 9. Defendant used an “automatic telephone dialing system” as defined
25 by 47 U.S.C. § 227(a)(1) to place its call to Plaintiff seeking to solicit its services.

26 10. Defendant contacted or attempted to contact Plaintiff from telephone
27 number (619) 489- 7164.

28 11. Defendant’s calls constituted calls that were not for emergency

1 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

2 12. During all relevant times, Defendant did not possess Plaintiff's "prior
3 express consent" to receive calls using an automatic telephone dialing system or an
4 artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. §
5 227(b)(1)(A).

6 13. Further, Plaintiff's cellular telephone numbers ending in -5154, -1636,
7 -0106, and -1080 were added to the National Do-Not-Call Registry on or about
8 February 21, 2017, June 14, 2015, and November 12, 2014.

9 14. Defendant placed multiple calls soliciting its business to Plaintiff on
10 its cellular telephones ending in 5154, -1636, -0106, and -1080 in or around May
11 of 2015.

12 15. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
13 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

14 16. Plaintiff received numerous solicitation calls from Defendant within a
15 12-month period.

16 17. Plaintiff requested for Defendant to stop calling Plaintiff during one
17 of the initial calls from Defendant, thus revoking any prior express consent that had
18 existed and terminating any established business relationship that had existed, as
19 defined under 16 C.F.R. 310.4(b)(1)(iii)(B).

20 18. Despite this, Defendant continued to call Plaintiff in an attempt to
21 solicit its services and in violation of the National Do-Not-Call provisions of the
22 TCPA.

23 19. Upon information and belief, and based on Plaintiff's experiences of
24 being called by Defendant after requesting they stop calling, and at all relevant
25 times, Defendant failed to establish and implement reasonable practices and
26 procedures to effectively prevent telephone solicitations in violation of the
27 regulations prescribed under 47 U.S.C. § 227(c)(5).

CLASS ALLEGATIONS

20. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member the four proposed classes (hereafter, jointly, “The Classes”). The class concerning the ATDS claim for no prior express consent (hereafter “The ATDS Class”) is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

21. The class concerning the ATDS claim for revocation of consent, to the extent prior consent existed (hereafter “The ATDS Revocation Class”) is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had revoked any prior express consent to receive such calls prior to the calls within the four years prior to the filing of this Complaint.

22. The class concerning the National Do-Not-Call violation (hereafter “The DNC Class”) is defined as follows:

All persons within the United States registered on the National Do-Not-Call Registry for at least 30 days, who had not granted Defendant prior express consent nor had a prior established business relationship, who received

1 more than one call made by or on behalf of Defendant
2 that promoted Defendant's products or services, within
3 any twelve-month period, within four years prior to the
4 filing of the complaint.

5 23. The class concerning the National Do-Not-Call violation following
6 revocation of consent and prior business relationship, to the extent they existed
7 (hereafter "The DNC Revocation Class") is defined as follows:

8 All persons within the United States registered on the
9 National Do-Not-Call Registry for at least 30 days, who
10 received more than one call made by or on behalf of
11 Defendant that promoted Defendant's products or
12 services, after having revoked consent and any prior
13 established business relationship, within any twelve-
14 month period, within four years prior to the filing of the
15 complaint.

16 24. Plaintiff represents, and is a member of, The ATDS Class, consisting
17 of all persons within the United States who received any solicitation telephone calls
18 from Defendant to said person's cellular telephone made through the use of any
19 automatic telephone dialing system or an artificial or prerecorded voice and such
20 person had not previously not provided their cellular telephone number to
21 Defendant within the four years prior to the filing of this Complaint.

22 25. Plaintiff represents, and is a member of, The ATDS Revocation Class,
23 consisting of all persons within the United States who received any
24 solicitation/telemarketing telephone calls from Defendant to said person's cellular
25 telephone made through the use of any automatic telephone dialing system or an
26 artificial or prerecorded voice and such person had revoked any prior express
27 consent to receive such calls prior to the calls within the four years prior to the
28 filing of this Complaint.

26. Plaintiff represents, and is a member of, The DNC Class, consisting

1 of all persons within the United States registered on the National Do-Not-Call
2 Registry for at least 30 days, who had not granted Defendant prior express consent
3 nor had a prior established business relationship, who received more than one call
4 made by or on behalf of Defendant that promoted Defendant's products or services,
5 within any twelve-month period, within four years prior to the filing of the
6 complaint.

7 27. Plaintiff represents, and is a member of, The DNC Revocation Class,
8 consisting of all persons within the United States registered on the National Do-
9 Not-Call Registry for at least 30 days, who received more than one call made by or
10 on behalf of Defendant that promoted Defendant's products or services, after
11 having revoked consent and any prior established business relationship, within any
12 twelve-month period, within four years prior to the filing of the complaint.

13 28. Defendant, its employees and agents are excluded from The Classes.
14 Plaintiff does not know the number of members in The Classes, but believes the
15 Classes members number in the thousands, if not more. Thus, this matter should
16 be certified as a Class Action to assist in the expeditious litigation of the matter.

17 29. The Classes are so numerous that the individual joinder of all of its
18 members is impractical. While the exact number and identities of The Classes
19 members are unknown to Plaintiff at this time and can only be ascertained through
20 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
21 The Classes includes thousands of members. Plaintiff alleges that The Classes
22 members may be ascertained by the records maintained by Defendant.

23 30. Plaintiff and members of The ATDS Class and The ATDS Revocation
24 Class were harmed by the acts of Defendant in at least the following ways:
25 Defendant illegally contacted Plaintiff and ATDS Class members via their cellular
26 telephones thereby causing Plaintiff and ATDS Class and ATDS Revocation Class
27 members to incur certain charges or reduced telephone time for which Plaintiff and
28 ATDS Class and ATDS Revocation Class members had previously paid by having

1 to retrieve or administer messages left by Defendant during those illegal calls, and
2 invading the privacy of said Plaintiff and ATDS Class and ATDS Revocation Class
3 members.

4 31. Common questions of fact and law exist as to all members of The
5 ATDS Class which predominate over any questions affecting only individual
6 members of The ATDS Class. These common legal and factual questions, which
7 do not vary between ATDS Class members, and which may be determined without
8 reference to the individual circumstances of any ATDS Class members, include,
9 but are not limited to, the following:

- 10 a. Whether, within the four years prior to the filing of this
11 Complaint, Defendant made any telemarketing/solicitation call
12 (other than a call made for emergency purposes or made with
13 the prior express consent of the called party) to a ATDS Class
14 member using any automatic telephone dialing system or any
15 artificial or prerecorded voice to any telephone number
16 assigned to a cellular telephone service;
- 17 b. Whether Plaintiff and the ATDS Class members were damaged
18 thereby, and the extent of damages for such violation; and
- 19 c. Whether Defendant should be enjoined from engaging in such
20 conduct in the future.

21 32. As a person that received numerous telemarketing/solicitation calls
22 from Defendant using an automatic telephone dialing system or an artificial or
23 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
24 claims that are typical of The ATDS Class.

25 33. Common questions of fact and law exist as to all members of The
26 ATDS Revocation Class which predominate over any questions affecting only
27 individual members of The ATDS Revocation Class. These common legal and
28 factual questions, which do not vary between ATDS Revocation Class members,

1 and which may be determined without reference to the individual circumstances of
2 any ATDS Revocation Class members, include, but are not limited to, the
3 following:

- 4 a. Whether, within the four years prior to the filing of this
5 Complaint, Defendant made any telemarketing/solicitation call
6 (other than a call made for emergency purposes or made with
7 the prior express consent of the called party) to an ATDS
8 Revocation Class member, who had revoked any prior express
9 consent to be called using an ATDS, using any automatic
10 telephone dialing system or any artificial or prerecorded voice
11 to any telephone number assigned to a cellular telephone
12 service;
- 13 b. Whether Plaintiff and the ATDS Revocation Class members
14 were damaged thereby, and the extent of damages for such
15 violation; and
- 16 c. Whether Defendant should be enjoined from engaging in such
17 conduct in the future.

18 34. As a person that received numerous telemarketing/solicitation calls
19 from Defendant using an automatic telephone dialing system or an artificial or
20 prerecorded voice, after Plaintiff had revoked any prior express consent, Plaintiff
21 is asserting claims that are typical of The ATDS Revocation Class.

22 35. Plaintiff and members of The DNC Class and DNC Revocation Class
23 were harmed by the acts of Defendant in at least the following ways: Defendant
24 illegally contacted Plaintiff and DNC Class and DNC Revocation Class members
25 via their telephones for solicitation purposes, thereby invading the privacy of said
26 Plaintiff and the DNC Class and DNC Revocation Class members whose telephone
27 numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class
28 and DNC Revocation Class members were damaged thereby.

1 36. Common questions of fact and law exist as to all members of The
2 DNC Class which predominate over any questions affecting only individual
3 members of The DNC Class. These common legal and factual questions, which do
4 not vary between DNC Class members, and which may be determined without
5 reference to the individual circumstances of any DNC Class members, include, but
6 are not limited to, the following:

- 7 a. Whether, within the four years prior to the filing of this
8 Complaint, Defendant or its agents placed more than one
9 solicitation call to the members of the DNC Class whose
10 telephone numbers were on the National Do-Not-Call Registry
11 and who had not granted prior express consent to Defendant and
12 did not have an established business relationship with
13 Defendant;
- 14 b. Whether Defendant obtained prior express written consent to
15 place solicitation calls to Plaintiff or the DNC Class members'
16 telephones;
- 17 c. Whether Plaintiff and the DNC Class member were damaged
18 thereby, and the extent of damages for such violation; and
- 19 d. Whether Defendant and its agents should be enjoined from
20 engaging in such conduct in the future.

21 37. As a person that received numerous solicitation calls from Defendant
22 within a 12-month period, who had not granted Defendant prior express consent
23 and did not have an established business relationship with Defendant, Plaintiff is
24 asserting claims that are typical of the DNC Class.

25 38. Common questions of fact and law exist as to all members of The
26 DNC Class which predominate over any questions affecting only individual
27 members of The DNC Revocation Class. These common legal and factual
28 questions, which do not vary between DNC Revocation Class members, and which

1 may be determined without reference to the individual circumstances of any DNC
2 Revocation Class members, include, but are not limited to, the following:

- 3 a. Whether, within the four years prior to the filing of this
4 Complaint, Defendant or its agents placed more than one
5 solicitation call to the members of the DNC Class whose
6 telephone numbers were on the National Do-Not-Call Registry
7 and who had revoked any prior express consent and any
8 established business relationship with Defendant;
9 b. Whether Plaintiff and the DNC Class member were damaged
10 thereby, and the extent of damages for such violation; and
11 c. Whether Defendant and its agents should be enjoined from
12 engaging in such conduct in the future.

13 39. As a person that received numerous solicitation calls from Defendant
14 within a 12-month period, who, to the extent one existed, had revoked any prior
15 express consent and any established business relationship with Defendant, Plaintiff
16 is asserting claims that are typical of the DNC Revocation Class.

17 40. Plaintiff will fairly and adequately protect the interests of the members
18 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of
19 class actions.

20 41. A class action is superior to other available methods of fair and
21 efficient adjudication of this controversy, since individual litigation of the claims
22 of all Classes members is impracticable. Even if every Classes member could
23 afford individual litigation, the court system could not. It would be unduly
24 burdensome to the courts in which individual litigation of numerous issues would
25 proceed. Individualized litigation would also present the potential for varying,
26 inconsistent, or contradictory judgments and would magnify the delay and expense
27 to all parties and to the court system resulting from multiple trials of the same
28 complex factual issues. By contrast, the conduct of this action as a class action

1 presents fewer management difficulties, conserves the resources of the parties and
2 of the court system, and protects the rights of each Classes member.

3 42. The prosecution of separate actions by individual Classes members
4 would create a risk of adjudications with respect to them that would, as a practical
5 matter, be dispositive of the interests of the other Classes members not parties to
6 such adjudications or that would substantially impair or impede the ability of such
7 non-party Class members to protect their interests.

8 43. Defendant has acted or refused to act in respects generally applicable
9 to The Classes, thereby making appropriate final and injunctive relief with regard
10 to the members of the Classes as a whole.

11 **FIRST CAUSE OF ACTION**

12 **Negligent Violations of the Telephone Consumer Protection Act**

13 **47 U.S.C. §227(b).**

14 **On Behalf of the ATDS Class and ATDS Revocation Class**

15 44. Plaintiff repeats and incorporates by reference into this cause of action
16 the allegations set forth above at Paragraphs 1-43.

17 45. The foregoing acts and omissions of Defendant constitute numerous
18 and multiple negligent violations of the TCPA, including but not limited to each
19 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular
20 *47 U.S.C. § 227 (b)(1)(A)*.

21 46. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*,
22 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
23 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

24 47. Plaintiff and the ATDS Class and ATDS Revocation Class members
25 are also entitled to and seek injunctive relief prohibiting such conduct in the future.

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SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

On Behalf of the ATDS Class and the ATDS Revocation Class

48. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-43.

49. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

50. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227(b)*, Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

51. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

On Behalf of the DNC Class and the DNC Revocation Class

52. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-43.

53. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular *47 U.S.C. § 227 (c)(5)*.

54. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*,

1 Plaintiff and the DNC Class and DNC Revocation Class Members are entitled an
2 award of \$500.00 in statutory damages, for each and every violation, pursuant to
3 *47 U.S.C. § 227(c)(5)(B)*.

4 55. Plaintiff and the DNC Class and DNC Revocation Class members are
5 also entitled to and seek injunctive relief prohibiting such conduct in the future.

6
7 **FOURTH CAUSE OF ACTION**

8 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
9 **Act**

10 **47 U.S.C. §227 et seq.**

11 **On Behalf of the DNC Class and DNC Revocation Class**

12 56. Plaintiff repeats and incorporates by reference into this cause of action
13 the allegations set forth above at Paragraphs 1-43.

14 57. The foregoing acts and omissions of Defendant constitute numerous
15 and multiple knowing and/or willful violations of the TCPA, including but not
16 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*,
17 in particular *47 U.S.C. § 227 (c)(5)*.

18 58. As a result of Defendant's knowing and/or willful violations of *47*
19 *U.S.C. § 227(c)*, Plaintiff and the DNC Class and DNC Revocation Class members
20 are entitled an award of \$1,500.00 in statutory damages, for each and every
21 violation, pursuant to *47 U.S.C. § 227(c)(5)*.

22 59. Plaintiff and the DNC Class and DNC Revocation Class members are
23 also entitled to and seek injunctive relief prohibiting such conduct in the future.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

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FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's willful and/or knowing violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to *47 U.S.C. §227(b)(3)(B)* and *47 U.S.C. §227(b)(3)(C)*.
- Any and all other relief that the Court deems just and proper.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendant's negligent violations of *47 U.S.C. §227(c)(5)*, Plaintiff and the DNC Class and DNC Revocation Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(c)(5)*.
- Any and all other relief that the Court deems just and proper.

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///

FOURTH CAUSE OF ACTION

**Knowing and/or Willful Violations of the Telephone Consumer Protection
Act**

47 U.S.C. §227(c)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class and DNC Revocation Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(c)(5).
- Any and all other relief that the Court deems just and proper.

60. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully Submitted this 18th Day of February, 2019.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff